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NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 20th December 1952 :—

Issue No.	No. and date	Issued by	Subject
167	S. R. O. 2049, dated the 16th December 1952.	Election Commission, India	Publication of Election Petition No. 261/1952.
168	S. R. O. 2071, dated the 17th December 1952.	Ditto.	Publication of Election Petition No. 109 of 1952.
	S. R. O. 2072, dated the 17th December 1952.	Ditto.	Publication of Election Petition No. 217 of 1952.
169	S. R. O. 2073, dated the 18th December 1952.	Ministry of Food and Agriculture.	Publication of an Order controlling the Ishwari Khetan Sugar Mills Ltd., Lakshmiganj, District Deoria.
	S. R. O. 2074, dated the 18th December 1952	Ditto.	Publication of an Order controlling the Maheahwari Khetan Sugar Mills Ltd., Ramkola, District Deoria.
170	S. R. O. 2075, dated the 18th December 1952.	Ditto.	Publication of Cottonseed (Control) Order.
171	S. R. O. 2076, dated the 18th December 1952	Ministry of Commerce and Industry	Rescindment of Notification No. S. R. O. 1245, dated the 13th August 1951.
172	S. R. O. 2077, dated the 18th December 1952	Election Commission, India	Publication of Election Petition No. 151 of 1952

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

ELECTION COMMISSION, INDIA

New Delhi, the 17th December 1952

S.R.O. 2085.—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People

Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under Notification No. RN-P/52(3), dated the 28th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Sohan Mal, Moti Singh Bhomia-ka-Rasta, Jalpur City, Rajasthan.

[No. RN-P/52(34).]

New Delhi, the 18th December 1952

S.R.O. 2086.—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. UP-P/52(44), dated the 5th July, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Heera Lal, 69/87, Danakhori Mohal, Kanpur City.

[No. UP-P/52(88).]

P. N. SHINGHAL, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 19th December 1952

S.R.O. 2087.—In exercise of the powers conferred by section 27 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to exempt *ex post facto* Col. Minto J. B. Rana, Governor, Elam Gaura, Exchange Pasupatinagar (Eastern Nepal) from the operation of the prohibitions and directions contained in section 6 of the said Act in respect of one .450 bore revolver and twenty-five .450 inch cartridges.

[No. 9/54/52-Police(I).]

U. K. GHOSAL, Dy. Secy.

New Delhi, the 20th December 1952

S.R.O. 2088.—In exercise of the powers conferred by the proviso to article 309 of the Constitution read with articles 313 and 372 thereof and paragraph 19 of the Adaptation of Laws Order, 1950, the President hereby directs that the following further amendment shall be made in the notification of the Government of India in the late Home Department, No. F-9/2/33-Establishments, dated the 9th January, 1934, namely:—

In the Schedule annexed to the said Rules for the entries under the heading 'INDIAN POSTS AND TELEGRAPHS DEPARTMENT' the following entries, shall be substituted namely:—

1	2	3	4
Postal Superintendents' Service Class II.	Director General of Posts and Telegraphs.	Head of Circle	(i), (ii), (iv) & (v).
Superintendents of offices of Heads of Circles, with Class II status.	Director General of Posts and Telegraphs.	Director General of Posts and Telegraphs.	(iii), (vi) and (vii).
Managers of Dead Letter Offices with Class II status.	Director General of Posts and Telegraphs.	Head of Circle	(i), (ii), (iv) and (v).
		Director General of Posts and Telegraphs.	(iii), (vi) and (vii).
		Head of Circle	(i), (ii), (iv) and (v).
		Director General of Posts and Telegraphs.	(iii), (vi) and (vii).

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Postmasters' Service, Class II.	Director of Posts and Telegraphs.	General Head of Circle	(i), (ii), (iv) and (v).
Telegraph Traffic Service, Class II.	Director of Posts and Telegraphs.	Director General of Posts and Telegraphs.	(iii), (vi) and (vii).
Assistant Engineer Buildings	Director General of Posts and Telegraphs.	Head of Circle	(i), (ii), (iv) and (v).
Managers, Mail Motor Service including the Engineer-in-Charge, Mail Motor Service, Calcutta.	Director General of Posts and Telegraphs.	Director General of Posts and Telegraphs.	(iii), (vi) and (vii).
Telegraphs Engineering and Wireless Service, Class II.	Director General of Posts & Telegraphs.	Deputy Director General, Staff & Establishment, P. & T. Directorate. Head of Circle Head of Telephone District. Chief Controller of Telegraph Stores. General Manager, Posts & Telegraphs Workshops.	(i), (ii), (iv) and (v).
Accounts Officers . . .	Director General of Posts and Telegraphs.	Director General of Posts and Telegraphs. Deputy Director-General, Staff and Establishment, Posts and Telegraphs Directorate. Head of Circle Head of Telephone District. Chief Controller of Telegraph Stores. General Manager, Posts and Telegraphs Workshops.	(iii), (vi) and (vii). (i), (ii), (iv) and (v).
Assistant Engineers in General Central Service, Class II.	Director General of Posts and Telegraphs.	Director General of Posts and Telegraphs. Head of Circle Head of Tele. Distt.	(iii), (vi) and (v). (i), (ii), (iv) and (v).

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Contract Officers, Telephone Districts, Bombay & Calcutta.	Director General of Posts and Telegraphs.	Head of Telephone District.	(i), (ii), (iv), and (v).
Assistant Managers, Bombay Telephone District.	Director General of Posts and Telegraphs.	Head of Telephone District.	Director General (iii), (vi) and (vii).
Assistant Traffic Superintendents, Calcutta Telephone District.	Director General of Posts and Telegraphs.	Head of Telephone District.	Director General (iii), (vi) and (vii).
Officer on Special Duty in General Central Service, Class II, Calcutta Telephones District.	Director General of Posts and Telegraphs.	Head of Telephone District.	Director General (i), (ii), (iv) and (v).
Superintendents of Offices Heads of Districts.	Director General of Posts and Telegraphs.	Head of Telephone District.	Director General (iii), (vi) and (vii).
Stamp Officer . . .	Director General of Posts and Telegraphs.	Director General, Staff and Establishment, Posts and Telegraphs Directorate } Deputy Director-General, Staff and Establishment, Posts and Telegraphs Directorate }	(i), (ii), (iv) and (v).
Assistant Secretary, Posts and Telegraphs Board.	Director General of Posts and Telegraphs.	Director General of Posts and Telegraphs.	(iii), (vi) and (vii).
Assistant Secretary, Inter-Departmental Wireless Board.	Director-General of Posts and Telegraphs.	Deputy Director-General, Staff and Establishment, Posts and Telegraphs Directorate } Director General of Posts and Telegraphs.	(i), (ii), (iv) and (v).
Assistant Engineers Workshops.	Posts and Telegraphs Workshops Board.	Director General of Posts and Telegraphs.	(iii), (vi) and (vii).
		General Manager, Posts and Telegraphs Workshops.	(i), (ii), (iv) and (v).
		Posts and Telegraphs Workshops Board.	(iii), (vi) and (vii).

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Assistant Engineers, Bom- bay Telephone Work- shops.	Posts and Telegraphs Workshops Board.	General Manager, (i) (ii), (iv) and (v). Posts and Telegra- phs Workshops. Posts and Telegraphs (iii), (vi) and (vii). Workshops Board.
Liaison Officer in the Gene- ral Central Service, Class II, Office of the General Manager, Posts and Tele- graphs Workshops.	Posts and Telegraphs Workshops Board.	General Manager, (i), (ii), (iv) and (v). Posts and Telegraphs Workshops.
Foremen, Telegraph Work- shops Alipore, and Jaba- pur.	Posts and Telegraphs Workshops Board.	General Manager, (i), (ii), (iv) and (v). Posts and Telegraphs Workshops. Posts and Telegraphs (iii), (vi) and (vii). Workshops Board.

[No. 7/28/52-Ests.]

B. D. TEWARI, Dy. Secy.

MINISTRY OF EXTERNAL AFFAIRS*New Delhi, the 22nd December 1952*

S.R.O. 2889.—In exercise of the powers conferred by section 11 of the Chander-
nagore (Administration) Regulation, 1952 (No. I of 1952), the Central Government
hereby directs that the Indian Arms Act, 1878 (XI of 1878), shall extend to Chander-
nagore.

[No. 632 Eur. I.]

S. GUPTA, Under Secy.

MINISTRY OF STATES*New Delhi, the 18th December 1952*

S.R.O. 2090.—Corrigendum.—In the Annexeure to the Ministry of States Notifica-
tion No. S.R.O. 1354, dated the 30th July 1952, Explanation (II) to Clause (g) of
Section 2 shall be deleted and the following Explanation substituted in its place:—

"Explanation (II).—Notwithstanding anything to the contrary in the Indian
Sale of Goods Act, 1930 but subject to the provision contained in the
Explanation to Clause (4) of Article 286 of the Constitution the sale
or purchase of any goods shall be deemed for the purposes of this Act
to have taken place in the State of Kutch, wherever the contract of
sale or purchase might have been made".

[No. 233-Econ.]

H. C. MAHINDROO, Under Secy.

MINISTRY OF FINANCE**(Department of Economic Affairs)***New Delhi, the 22nd December 1952*

S.R.O. 2091.—In pursuance of sub-section (3) of section 28 of the Imperial Bank
of India Act, 1920 (XLVII of 1920), and in supersession of the Notification of the

Government of India, Ministry of Finance, Department of Economic Affairs, No. D.3776-F.I/50, dated the 31st July, 1950, the Central Government hereby nominates Shri S. G. Barve, I.C.S., Joint Secretary to the Government of India in the Ministry of Finance, Department of Economic Affairs, to attend the meetings of the Central Board of the Imperial Bank of India.

[No. D.7717-F.I/52.]

S. K. SEN, Dy. Secy.

(INSURANCE)

New Delhi, the 22nd December, 1952

S.R.O. 2092.—WHEREAS the Central Government, after considering the report of the Controller of Insurance, is of opinion that it is necessary to appoint an Administrator to manage the affairs of the Bhagya Lakshmi Insurance Limited with its registered office at Calcutta,

NOW THEREFORE, in exercise of the powers conferred by sub-section (2) of Section 52A of the Insurance Act, 1938, (IV of 1938), the Central Government hereby appoints with effect from the 27th December, 1952, Shri S. C. Roy, M.A., B.L. Managing Director, Aryasthan Insurance Company Limited, Calcutta, as Administrator to manage the affairs of the said Bhagya Lakshmi Insurance Limited, under the direction and control of the Controller of Insurance.

[No. 7-IB(2)/52.]

B. K. KAUL, Dy. Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 16th December 1952

S.R.O. 2093.—In exercise of the powers conferred by sub-section (1) of section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue is pleased to direct that the following further amendments shall be made in the Indian Income-tax Rules, 1922, the same having been previously published as required by sub-section (4) of the said section, namely:—

In the said Rules—

1. In rule 37 the words, figures and letter “and under rule 36-A by a return of total income” shall be deleted;

2. (a) In rule 39 the words, figures and letter “or rule 36-A” shall be deleted;

(b) In clause (a) of rule 39, the following words shall be added at the end, namely:—

“Where by special order the Commissioner of Income-tax or the Central Board of Revenue has authorised an Income-tax Officer to deal with particular cases or classes of cases, the application for refund should be made to the Income-tax Officer so authorised.”

3. In rule 41 the figures and letter “36-A” shall be deleted.

[No. 83.]

S. P. LAHIRI, Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 22nd December 1952

S.R.O. 2094.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following amendment shall be made in the Notifications of the Government of India in the Ministry of Industry and Supply No. I(I)-4(41), dated the 7th September 1950, and No. I(I)-1(106), dated the 8th March 1948, as amended from time to time, namely:—

In the Schedule annexed to each of the said Notifications, for the entry ‘Commissioner, Civil Supplies, Bhopal’, the following entries shall be substituted, namely:—

“The Secretary, Planning and Development Department, Government of Bhopal, Bhopal.”

The Secretary, Commerce and Industry Department, Government of Bhopal, Bhopal.”

[No. SC(A)-4(77).]

D. HEJMADI, Under Secy.

New Delhi, the 23rd December 1952

S.R.O. 2095.—The Central Government is pleased to notify the election of the following persons as members of the Central Silk Board in pursuance of Section 4(3) (c) of the Central Silk Board Act, 1948 (Act No. LXI of 1948):—

(a) Elected by the members of the House of the People from among themselves:—

- (i) Shri Rohini Kumar Chaudhuri, M.P.
- (ii) Shri M. K. Shivananjappa, M.P.
- (iii) Shri S. K. Babie Kandasamy, M.P.

(b) Elected by the members of the Council of States from among themselves:—

Shri Shyam Dhar Misra, M.P.

[No. 1(31)-Tex/52.]

A. S. SHARMA, Under Secy.

ORDERS

New Delhi, the 18th December 1952

S.R.O. 2096.—In exercise of the powers conferred by section 4 of the ~~Suppl.~~ and Prices of Goods Act, 1950 (LXX of 1950), and in partial modification of the notification of the Government of India in the late Ministry of Industry and Supply No. S.R.O. 503, dated the 2nd September 1950, in so far as it relates to the fixation of Maximum price of caustic soda, the Central Government hereby fixes the following Schedule of maximum prices in respect of 1061 cwts. (Gross) of caustic soda, imported from West Germany per s.s “Alkaid” during the month of October, 1952, by the Progressive Trading Company, 50, Easaji Street, Bombay 3.

SCHEDULE

Variety of caustic soda	Maximum price that may be charged by the importer	Maximum price that may be charged by a distributor	Maximum price that may be charged by a wholesale dealer	Maximum price that may be charged by a retail dealer
(1)	(2)	(3)	(4)	(5)
Caustic Soda flakes)	Rs. 38-3-6 per cwt. Ex-godown /F.O.R. Bombay.	The price specified in column 2 <i>PLUS</i> (a) actual railway freight by goods train or actual transport charges by sea from Bombay to the place of destination, and (b) handling charges not exceeding annas eight per cwt.	The price specified in column 3 <i>PLUS</i> a margin not exceeding annas eight per cwt.	The price specified in column 4 <i>PLUS</i> a margin not exceeding Rs. 1-12-0 per cwt.

NOTE.—These prices are exclusive of local taxes, such as Sales Tax, Octroi and other local taxes, which may be charged extra.

[No. PC-7(12)/52.]

S.R.O. 2097.—In exercise of the powers conferred by section 4 of the Supply and Prices of Goods Act, 1950 (LXX of 1950), and in partial modification of the notification of the Government of India in the late Ministry of Industry and Supply No. S.R.O. 503, dated the 2nd September 1950, in so far as it relates to the fixation of maximum price of caustic soda, the Central Government hereby fixes the following Schedule of maximum price for 205 cwts. (gross) of Caustic Soda imported per s.s. "Indian Pioneer" from Germany during the month of October 1952, by Messrs. Chemidye Trading Co. Ltd., Kamer Building, Cawasji Patel Street, Fort, Bombay.

SCHEDULE

Variety of Caustic Soda	Maximum price that may be charged by the importer	Maximum price that may be charged by a distributor	Maximum price that may be charged by a wholesale dealer	Maximum price that may be charged by a retail dealer
(1)	(2)	(3)	(4)	(5)
Caustic Soda (flake)	Rs. 36-6-0 per cwt. Ex-godown/ F.O.R. Bombay.	The price specified in column 2 <i>PLUS</i> (a) actual railway freight by goods train or actual transport charges by sea from Bombay to the place of destination, and (b) handling charges not exceeding annas eight per cwt.	The price specified in column 3 <i>PLUS</i> a margin not exceeding annas eight per cwt.	The price specified in column 4 <i>PLUS</i> a margin not exceeding Rs. 1-12-0 per cwt.

NOTE.—These prices are exclusive of local taxes such as Sales Tax, Octroi and other local taxes which may be charged extra.

[No. 7-PC(25)/52.]

S.R.O. 2098.—In exercise of the powers conferred by section 4 of the Supply and Prices of Goods Act, 1950 (LXXX of 1950), and in partial modification of the notification of the Government of India in the late Ministry of Industry and Supply, No. S.R.O. 503, dated the 2nd September 1950, in so far as it relates to the fixation of maximum price of Caustic Soda, the Central Government hereby fixes the maximum price as shown in the Schedule annexed hereto in respect of 2053 cwts. (gross) of Caustic Soda, imported from Germany per s.s. "Jalrajendra" during the month of September, 1952, by the Progressive Trading Company, 50, Esaji Street, Bombay 3.

SCHEDULE

(1)	(2)	(3)	(4)	(5)
Variety of Soda Custic	Maximum price that may be charged by the importer	Maximum price that may be charged by a distributor	Maximum price that may be charged by a wholesale dealer	Maximum price that may be charged by a retail dealer
Caustic Soda (flakes)	Rs. 40.1-6 per cwt. Ex-godown f.o.r./Bombay.	The price specified in col. 2 PLUS (a) actual railway freight by goods train or actual transport charges by sea from Bombay to the place of destination, and (b) handling charges not exceeding annas eight per cwt.	The price specified in Column 3 PLUS a margin not exceeding annas eight per cwt.	The price specified in Column 4 PLUS a margin not exceeding Rs. 1-12 0 per cwt.

Note.—These prices are exclusive of local taxes, such as Sales Tax, Octroi and other local taxes which may be charged extra.

[No. 7-PC(12)/52.]

H. K. KAPOOR, Under Secy.

MINISTRY OF FOOD AND AGRICULTURE

ORDER

New Delhi, the 23rd December 1952

S.R.O. 2099.—In exercise of the powers conferred by sub-section (4) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the following amendments shall be made in the Order of the Government of India in the Ministry of Food and Agriculture No. S.R.O. 1988, dated the 2nd December, 1952, namely:—

In the said Order—

After clause 1 the following clause shall be inserted, namely:—

"1A. Notwithstanding anything contained in the Articles of Association of the undertaking the Central Government authorises the Authorised Controller to raise the limit on the borrowing power of the undertaking up to a maximum of Rs. 30 lakhs."

[No. SV-125(5)/52.]

VISHNU SAHAY, Secy.

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 18th December 1952

S.R.O.2100.—In exercise of the powers conferred by section 59 of the Damodar Valley Corporation Act, 1948 (XIV of 1948), the Central Government hereby directs that the following further amendments shall be made in the Rules published with the notification of the Government of India in the late Ministry of Works, Mines and Power No. DW-III-A-4(7)-Dam, dated the 23rd April, 1948, namely:—

In the said Rules:—

(1) In rule 28, for the words “the Auditor General of India”, the words “the Comptroller and Auditor General of India, and under his direction and control”, shall be substituted.

(2) For rule 31 the following rule shall be substituted, namely:—

“31. The Audit Officer shall certify to the correctness of the Annual Accounts prepared by the Corporation and append to the certificate an audit report. The annual accounts so certified and the audit report shall, after countersignature by the Comptroller and Auditor General, be submitted with three additional copies to the President. One copy shall be retained by the Central Government and one copy each shall be sent to the other two participating Governments. The Audit Report shall be printed along with the Annual Report and Annual Accounts.”

[No. 40(1)52-Adm.]

A. R. KHANNA, Dy. Secy.

MINISTRY OF HEALTH

New Delhi, the 22nd December 1952

S.R.O. 2101.—In pursuance of section 3 of the Pharmacy Act, 1948 (VIII of 1948), the Central Government hereby directs that the following amendments shall be made in the notification of the Government of India, in the Ministry of Health No. F. 6-2/48-DS, dated the 9th March, 1949, namely:—

In the said notification, for the entries 1 and 3 the following entries shall be substituted, namely:—

- “1. Dr. S. Rangaswami, M.A., Ph.D., D.Phil (Basle), F.R.I.C., Professor and Head of the Department of Pharmacy, Andhra University, Waltair.
- 3. Surgeon Lt. Commander Jal. R. Patel, M.D., F.C.P.S., Professor of Pharmacology, Grant Medical College, Bombay.”

[No. F.7-19/52-DS.]

S. DEVANATH, Under Secy.

MINISTRY OF COMMUNICATIONS

(Posts & Telegraphs)

New Delhi, the 19th December 1952

S.R.O. 2102.—In exercise of the powers conferred by section 36 of the Indian Post Office Act, 1898 (VI of 1898), the Central Government hereby directs that, with effect from the 1st January 1953, the following further amendments shall be made in the Indian Post Office Rules, 1933, namely:—

In the said Rules—

1. In rule 67 after the word ‘Letters’ the words ‘Air letters’ shall be inserted.
2. In rule 68, after the words ‘any letter’ the words ‘air letter’ shall be inserted.

3. In sub-rule (c) of rule 71 after 'Portuguese India,' the following words shall be added at the end, namely:—

'of one anna and nine pies in the case of a registered air letter addressed to Ceylon.'

[No. DA.84-7/51.]

K. V. VENKATACHALAM, Dy. Secy.

New Delhi, the 19th December 1952

S.R.O. 2103.—In exercise of the powers conferred by rule 53 of the Indian Aircraft Rules, 1920, the Central Government is pleased—

- (a) to declare the aerodrome at Jodhpur to be a customs aerodrome; and
- (b) to appoint the Collector of Central Excise, Delhi as Chief Customs Officer and the Assistant Collector of Central Excise, Ajmer and the Superintendent of Central Excise, Jodhpur as Customs-Collectors, for the purposes of the said Rules at the said Customs Aerodrome.

[No. 10-A/76-50.]

P. K. ROY, Dy. Secy.

MINISTRY OF TRANSPORT

LIGHTHOUSES

New Delhi, the 18th December 1952

S.R.O. 2104.—In pursuance of sub-section (1) of Section 4 of the Indian Lighthouse Act, 1927 (XVII of 1927), the Central Government has been pleased to appoint a Central Advisory Committee for Lighthouses for a period of two years from the date of this Notification, consisting of the following persons:—

Chairman

Secretary to the Government of India, Ministry of Transport (*ex-officio*) or an officer deputed by him to act as Chairman on his behalf.

Members

1. Director General of Shipping, Bombay (*ex-officio*).
2. Nautical Adviser to the Government of India (*ex-officio*).
3. Shri Bijoy Prasad Singh Roy, Director, India Steamship Co. Ltd., D. 1-Clive Buildings, Calcutta.
4. Shri G. T. Kamdar, C/o Bharat Line Ltd., Mehta House, Apollo Street, Fort, Bombay.
5. Shri J. R. Galloway, C/o Messrs. Gordon Woodroffe and Co. (Madras) Ltd., Madras.
6. Shri M. A. Master, Raj Mahal, Juhu, Bombay 23.
7. Engineer-in-Chief, Lighthouse Department, Bombay (*ex-officio*)—Member Secretary.

[No. 15-M.T(4)/52.]

S. K. GHOSH, Dy. Secy.

PORTS

New Delhi, the 19th December, 1952

S.R.O. 2105.—In pursuance of sections 7 and 13 of the Bombay Port Trust Act, 1879 (Bombay Act VI of 1879), the Central Government hereby appoints Captain A. Chakraverti, I.N., Captain Superintendent, Indian Naval Dockyard, Bombay, to be a member of the Board of Trustees of the Port of Bombay *vice* Commodore R. M. T. Taylor, R.N., Commodore-in-Charge, Bombay, on leave.

[No. 8-PI(197)/52.]

S. N. CHIB, Dy. Secy.

PORTS

New Delhi, the 19th December 1952

S.R.O. 2106.—The following draft of an amendment to the Rules for the Regulation and Management of the Port of Kandla published by the Notification of the Government of India in the Ministry of Transport No. 14-P(35)/50-I, dated the 30th May 1950, which it is proposed to make in exercise of the powers conferred by sub-section (1) of section 6 of the Indian Ports Act, 1908 (XV of 1908), is published as required by sub-section (2) of the said section for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 30th January 1953.

Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendment

In clause (a) of rule 41 and in rule 44 of the said Rules the word "completed" shall be omitted.

[No. 14-P(35)/50.]

S.R.O. 2107.—In exercise of the powers conferred by clause (j) of sub-section (1) of section 6 of the Indian Ports Act, 1908 (XV of 1908), the Central Government hereby directs that the following rules shall be made for the levy of hire charges for supply of certain port materials at the Port of Kandla, the same having been previously published as required by sub-section (2) of the said section, namely:—

Hire charges for supply of Port materials

1. Hire of Port Trolleys within the Port area for use other than landing and shipment of goods.	Rs. -/- per trip.
2. Hire of Petromax light for purposes other than landing and shipment.	Rs. 2/- per light per night.

[No. 14-P(35)/50.]

C. PARTHASARATHY, Under Secy.

MINISTRY OF RAILWAYS
(Railway Board)

New Delhi, the 22nd December 1952

S.R.O. 2108.—In exercise of the powers conferred by sub-section (3) of the section 3 of the Indian Posts Act, 1908 (XV of 1908), and in supersession of the Ministry of Railways (Railways Board) Notification No E51RC1-71, dated 8th February 1952, the Central Government is pleased to authorise Shri V. K. Sundaram, Probationer Pilot, Vizagapatam Port, to pilot all vessels in and out of the Port of Vizagapatam.

[No. E51RC1-71-Pt.]

P. N. SAXENA, Director,
Establishment.

MINISTRY OF WORKS, HOUSING AND SUPPLY

New Delhi, the 18th December 1952

S.R.O. 2109.—The following draft of a further amendment to the Petroleum Rules, 1937, which it is proposed to make in exercise of the powers conferred by Section 4 and sub-section (1) of section 29 of the Petroleum Act, 1934 (XXX of 1934), is published as required by sub-section (2) of section 29, for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after 15th January 1953.

Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendment

In rule 38 of the said Rules, after clause (c), the following clause shall be inserted, namely:—

“(cc) the vessel used for the carriage of petroleum in bulk—

- (i) is not taken among other ships unless the vessel is proceeding to an oil berth or a certificate is produced from an officer appointed by the Central Government under clause (c) to the effect that such officer has examined the tanks with the aid of a vapour testing instrument and that the vessel is free from dangerous vapour and is in a fit state to enter dock;
- (ii) does not proceed to dry dock unless the certificate mentioned in sub-clause (i) is produced;
- (iii) does not undergo any repairs in a dry or wet dock to pipes, valves, pumps and other fittings of tankers and pump room unless a certificate signed by the officer mentioned in sub-clause (i) to the effect that such fittings are free from dangerous vapour has been obtained:

Provided that a vessel used for the carriage of Petroleum in bulk which has not carried petroleum of a flash point below 150° F. since her last gas free certificate was granted and which is entering Dry Dock for the purpose of hull painting and examination only may be admitted into Dry Dock on a certificate issued by the Master of the Vessel stating that the tanks have been properly cleaned out:

Provided further that if after entering into Dry Dock it should transpire that the vessel requires more expensive repairs, a gas free certificate signed by an officer appointed by the Central Government under clause (c) must be produced before such repairs are commenced.

[No. Misc-104.]

New Delhi, the 22nd December 1952

S.R.O. 2110.—In exercise of the powers conferred by section 31 of the Petroleum Act, 1934 (XXX of 1934), the Central Government hereby directs that to the Acts in the Schedule annexed to the Notification of the Government of India in the late Ministry of Works, Mines and Power No. P-104, dated the 4th May, 1950, the following enactments shall be added at the end namely:—

1. The Trivandrum City Municipal Act IV of 1116.
2. The Travancore District Municipalities Act XXIII of 1116.
3. The Cochin Municipal Act, (XVIII of 1113).
4. The Hyderabad Sanitary Powers Act in No. V of 1352 Fasli.
5. The Hyderabad Municipal Corporation Act, 1950 (No. XXXVI of 1950).
6. The Madras Village Panchayat Act, 1950 (Madras Act X of 1950).

[No. M-104(9)/52.]

B. S. KALKAT, Under Secy.

(Central Boilers Board)

New Delhi, the 22nd December 1952

S.R.O. 2111.—The following draft of certain amendments to the Indian Boiler Regulations, 1950, which the Central Boilers Board propose to make in exercise of the power conferred by section 28 of the Indian Boilers Act, 1923 (V of 1923), is published as required by sub-section (1) of section 31 of the said Act, for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 15th February, 1952.

Any objections or suggestions which may be received from any person with respect to the said draft before the date specified will be considered by the Central

Boilers Board Such objections or suggestions should be addressed to the Secretary, Central Boilers Board, Ministry of Works, Housing and Supply, North Block, New Delhi

Draft Amendments

In the said Regulations,—

(1) in Regulation 33, for clause (b), the following clause shall be substituted, namely —

"(b) the chemical composition of the plates shall be as follows —

	<i>Per cent.</i>
Copper	99 2 minimum
Arsenic	30 to 50
Antimony	0 03 maximum
Bismuth	0 01 maximum
Oxygen	0 10 maximum"

(2) in Regulation 34, for clause (e), the following clause shall be substituted, namely —

"(e) The material shall have the tensile properties shown in the following table —

TABLE
(Tensile properties)

..	Unturned rods (rods upto 1 1/4 in dia)	Turned rods (rods above 1 1/4 in dia)
minimum tensile strength lb [per sq in.]	32400	32400
elongation, minimum per cent in 2 in gauge length	40	45

(3) in Regulation 86,—

(i) in clause (b) after the word 'phosphorus' the words 'or sulphur or both' shall be inserted.

(ii) for clause (c), the following clauses shall be substituted, namely —

"(c) *Moulding*—The castings shall be accurately moulded in accordance with the pattern or working drawings supplied by the Inspecting Authority with the addition of such letters, figures or marks as may be specified and the drawings shall include the tolerances specified in the Regulations.

(d) *Freedom from defects*—The castings shall be sound, clean, out of twist and free from blow holes distortion and all surface and other defects. They shall be well dressed or fettled and shall be machinable by normal methods."

(4) in Regulation 87, after the word 'sand' in the first line of fourth para, the words 'or in Loam' shall be inserted,

(5) in regulation 88,—

(i) in clause (a), in the second column of table under "Limits on diameter" in clause (a) of regulation 88, the signs \pm (*Plus or minus*) shall be shown before the figures. The \pm (*Plus or minus*) shown after the figures in the first column under "Diameter of test Bar" shall be deleted

(ii) in clause (c), for "pp 28-29", the following shall be substituted, namely.— "under clause (a) of this Regulation"

(6) in Regulation 506, after the words "Process of manufacture" the following shall be added as a new para, namely —

"The castings shall be cast from metal melted or refined in any metallurgical plant other than an iron ore smelting furnace for the use of which furnace, permission in writing shall be obtained from the Inspecting Authority".

[No M/BL-304(55)/51]

B. S. KALKAT, Secy,
Central Boilers Board.

New Delhi, the 19th December 1952

S.R.O. 2112.—In pursuance of clause (b) of section 2 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952), the Central Government hereby authorises all the Collectors in the States of Bhopal, Bilaspur, Cooch-Behar, Coorg, Kutch, Manipur, Tripura and Vindhya Pradesh and all the Deputy Commissioners in the States of Himachal Pradesh and Patiala and East Punjab States Union to perform the functions of a competent authority under the said Act for the area within their respective jurisdictions.

[No. 10368-WII/52.]

K. K. SHARMA, Dy. Secy.

MINISTRY OF LABOUR

New Delhi, the 17th December 1952

S.R.O. 2113.—Corrigendum.—In the notification of the Government of India in the Ministry of Labour No. S.R.O. 798, dated the 24th April, 1952, published on pages 765—768 of Part II, Section 3 of the *Gazette of India*, dated the 3rd May 1952, under the heading 'Representatives of Employers' for the entry 'Shri J. Raghottam Reddy, Deshmukh (Warangal District), Hyderabad State read 'Shri J. Raghotham Reddy, 1910/3, Murlidhar Bag Road, Hyderabad-Deccan'.

[No. LWI-24(116).]

S.R.O. 2114.—In pursuance of rule 3 of the Minimum Wages (Central Advisory Board) Rules, 1949, the Central Government, hereby nominates the following persons to the Central Advisory Board, namely:—

- (1) Shri P. K. Sen, Labour Commissioner, Madhya Pradesh, Nagpur, as member, Central Advisory Board, to represent the State of Madhya Pradesh in place of Shri Ram Gopal Tiwari.
- (2) Shri D. N. Nigam, Labour Commissioner, Ambala, as member, Central Advisory Board, to represent the State of the Punjab in place of Shri G. W. Balchandani.
- (3) Shri M. K. Devassey, Labour Commissioner, Trivandrum, as a member of Central Advisory Board, to represent the State of Travancore-Cochin in place of Shri P. N. Krishna Pillai.
- (4) Shri I. C. Subbiah, M.A., B.L., Assistant Commissioner and District Magistrate, Coorg, as member, Central Advisory Board, to represent the State of Coorg in place of Shri N. C. Subaya.
- (5) Shri W. J. Oakley of Messrs. Obsette Ltd., Mirzapur, as member, Central Advisory Board, to represent the employers in 'Employment in woollen carpet making or shawl weaving establishments' in place of Shri D. May Arrindell.
- (6) Mr. J. L. Llewellyn, O.B.E., Deputy Chairman, Indian Tea Association, Calcutta, as a member of Central Advisory Board, to represent the employers in 'Employment in any Plantation' in place of Mr. H. F. Clark, C.I.E.
- (7) Shri Bijoy Kumar Pani, M.L.A., Village Baraipat, Sambalpur Town Post Office, District Sambalpur, as a member, Central Advisory Board, to represent the workers in 'Employment in Agriculture' in place of Shri Nilamani Routray.
- (8) Shri Shanti Prapanna, M.L.A., Dehra Dun, as member, Central Advisory Board, to represent workers in 'Employment in Agriculture in place of Shri Pool Singh.
- (9) Shri Ram Dayal Singh, Director of Industries, Vindhya Pradesh, as member, Central Advisory Board, to represent the State of Vindhya Pradesh in place of Dr. V. K. Chopra.

[No. LWI-24(116).]

SADASHIVA PRASAD, Dy. Secy.

New Delhi, the 18th December 1952

S.R.O. 2115.—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (IX of 1948), the Central Government hereby directs that the following amendment shall be made in the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951, the same having been previously published as required by the said sub-section, namely:—

In sub-clause (1) of clause 5 of the said Scheme, after the words "any other authority", the words "or any person" shall be inserted.

[No. Fac. 74(8).]

S. V. JOSHI, Dy. Secy.

New Delhi, the 19th December 1952

S.R.O. 2116.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following awards of the All India Industrial Tribunal (Bank Disputes), in the matter of victimisation, etc., of workmen in banking companies.

AWARDS

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES),
BOMBAY.

SERIAL NO. 153 IN REFERENCE NO. 2 OF 1952 (S.R.O. 42, DATED 8TH JANUARY 1952).

Shri Sri Krishna

versus

Imperial Bank of India.

This is one of the disputes referred to us for adjudication under the Government of India, Ministry of Labour Notification No. S.R.O. 42, dated 8th January 1952. It appears there as Serial No. 153 and the nature of the dispute as set out therein is as follows:

"Forfeiture of pay for two days."

2. Notice was issued to the workman by registered post on 12th February 1952 calling upon him to file a statement of his case on or before 29th February 1952. The notice was served on the workman on 18th February 1952 and a statement was received in the office on his behalf from the Imperial Bank of India Indian Staff Association. As it was not clear whether a copy of the statement had been forwarded to the Bank, the office was directed to send a copy of the same to the Bank on 11th September 1952. The Bank was further asked to send its reply statement in five copies not later than 25th September 1952. A copy of this letter was also forwarded for information to the General Secretary, Imperial Bank of India Indian Staff Association. On the same day the office wrote a letter to the workman in which his attention was drawn to the fact that his letter of authority in favour of the Association had not been so far received in the office. He was requested to send the same not later than 20th September 1952. This letter was received by the workman on 13th September 1952 and he wrote to us on 17th September 1952 as follows:—

"With reference to your letter No. 3539 of the 11th instant, I hereby withdraw my case and the Association has also been informed accordingly.

Please acknowledge receipt."

It appears from the receipt of a reply statement from the Bank that a copy of this letter was not obviously sent by the workman to the Bank. In view of the withdrawal it is unnecessary to consider the respective contentions of the parties. We pass an award that no orders are now necessary.

(Sd.) S. PANCHAPAGESA SASTRY, Chairman.

(Sd.) M. L. TANNAN, Member.

BOMBAY;

(Sd.) V. L. D'SOUZA, Member.

The 28th November, 1952.

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES),
BOMBAY.

SERIAL NUMBERS 165 AND 171 IN REFERENCE NO. 2 OF 1952 (S.R.O. 42, DATED 8TH JANUARY 1952).

Sri Rala Singh

versus

Hindustan Commercial Bank Ltd.

AND

Sri Sant Singh

versus

Hindustan Commercial Bank Ltd.

These are two of the disputes referred to us for adjudication under the Government of India (Ministry of Labour) Notification No. S.R.O. 42, dated 8th January 1952. They appear in the schedule as serial numbers 165 and 171, and the nature of the disputes in both the serial numbers, as set out therein, is as follows:—“Dismissal from service.”

The Bank did not furnish us with the addresses of the workmen. A reference to the records of the “Sen Tribunal” showed that the two workmen appeared before that Tribunal through the Hindustan Commercial Bank Employees’ Union, East Punjab, Badowal House, Kesar Ganj, Ludhiana. We accordingly directed that notices may be sent to the workmen c/o the said Union. They were accordingly sent. The Union accepted service on behalf of the workmen. The notices called upon the workmen to file statements of their cases on or before 23rd May 1952. This Office did not receive any statements either from the workmen direct or from the Union on their behalf. These cases were directed to be called before the Tribunal on 19th September 1952, when Sri Pyaralal, a representative of the Punjab Bank Employees’ Federation, to which it was represented that the Hindustan Commercial Bank Employees’ Union, East Punjab, was affiliated, prayed for a week’s adjournment in order to contact the workmen and report further instructions to the Tribunal. The cases were again called on 27th September 1952, when Sri Pyaralal represented to the Tribunal that the Union was not able to conduct the workmen. Thereupon he was directed to file a letter to that effect and orders were reserved.

Sri Pyaralal has not sent any letter so far. Obviously he does not want to take the responsibility on himself though he stated before us that the workmen could not be contacted. No useful purpose is served in keeping the cases still pending. The Sen Tribunal also held that the services of the workmen were terminated as a result of retrenchment carried out *bona fide* and necessitated by the circumstances. In the absence of statements from the workmen it is not possible for us to hold an enquiry. In these circumstances we pass an award that no orders can be passed in these two cases.

(Sd.) S. PANCHAPAGESA SASTRY, Chairman.

(Sd.) M. L. TANNAN, Member.

(Sd.) V. L. D’SOUZA, Member.

BOMBAY;

The 5th December, 1952.

[No. LR-100(30).]

S.R.O. 2117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the All India Industrial Tribunal (Bank Disputes) in respect of an application under Section 33-A of the said Act preferred by Shri Kamakhy Prosad Ghose of the United Commercial Bank Limited.

AWARD

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES)
BOMBAY.

APPLICATION No. 71 OF 1952

(Under Section 33 of the Industrial Disputes Act, 1947)

The United Commercial Bank Ltd.

versus

Shri Kamakhya Prosad Ghose,

AND

COMPLAINT No. 91 OF 1952

(Under Section 33A of the Industrial Disputes Act, 1947)

Shri Kamakhya Prosad Ghose,

versus

The United Commercial Bank Ltd.

Application 71/52 by the United Commercial Bank Ltd. is under Section 33 of the Industrial Disputes Act, 1947 for permission to discharge from service Shri Kamakhya Prosad Ghose, a workman employed in the Jalpaiguri branch of the Bank. This application was received in the office of this Tribunal on 1st August 1952. The workman was suspended on 29th April 1952 for alleged misconduct. Complaint No. 91/52 is under Section 33A of the Industrial Disputes Act. This was received by us on 13th November 1952.

2. Shri Ghose was engaged as Assistant Cashier of the Jalpaiguri branch of the Bank with effect from 25th May 1949. One Shri Kalipada Bose, the Chief Cashier of the Bank had given guarantee for this Assistant Cashier. It appears that the said Chief Cashier resigned on 9th March 1951 and the new Chief Cashier who was appointed was not willing to give any guarantee for Shri Ghose. According to the Bank, though it could have terminated the services of Shri Ghose, it did not do so but decided to utilize his services as a clerk in other departments. He was transferred to the Gauhati branch where there was a vacancy but on representations made by Shri Ghose the said order of transfer was cancelled. Sometime later, early in 1952, the Bank's Shillong branch required a man. Shri Ghose was accordingly transferred from Jalpaiguri to Shillong. He, however, raised some objections but the Bank insisted on the transfer. He asked for payment of his security money to enable him to meet his liabilities at Jalpaiguri and make arrangements to settle his family affairs and then proceed to Shillong. By his letter of the 31st March 1952 Shri Ghose asked for an early payment of the money due to him in the Savings Bank Account and promised to proceed to Shillong as soon as the money was paid. He again repeated the assurance in a subsequent letter dated 7th April 1952. The money was accordingly released to him by 10th April 1952 but instead of proceeding to Shillong as promised by him he applied for one month's leave from 15th April 1952 onwards. In his letter of 10th April 1952 he stated that he wanted the leave to enable him to settle his family affairs prior to his departure from Jalpaiguri to Shillong. The Bank was not convinced of the reasonableness of this request. It replied that he must proceed to Shillong forthwith as otherwise disciplinary action, even amounting to termination of service, would have to be taken against him for disobedience of orders. To this letter of the Bank dated 15th April 1952, Shri Ghose sent a reply on 23rd April 1952 whereby he once again requested the Bank to grant him leave as prayed for to enable him to put his "house in order" before leaving Jalpaiguri on transfer. That letter, however, contained another significant sentence at the end to the following effect: "Kindly note that if I fail to settle the family affairs I will let you know in due course after expiry of my leave." It was after the receipt of this letter that the Bank took action by suspending him on 29th April 1952. Some correspondence ensued thereafter between the parties but finally by its letter of the 13th June 1952 the Bank informed him that it had applied to this Tribunal for permission to terminate his services and pending such application and receipt of the Tribunal's permission it had placed him under suspension. That letter, however, stated that the Bank would still avoid terminating his services provided he proceeded to Shillong and reported to the branch there within a fortnight thereafter. In that event, the Bank was prepared to withdraw the suspension order and pay him his emoluments in full, treating the intervening period as leave. The letter further pointed out that it was more than 2½ months since he had been relieved from Jalpaiguri on 31st March 1952 and that he has had ample time to settle his affairs and proceed to Shillong. His emoluments for the month of April 1952 were to be given to him and as soon as he joined duty at Shillong the emoluments for the month of May also were to be given to him. Notwithstanding these reasonable terms the employee

definitely objected to his transfer to Shillong and insisted on his being retained at Jalpaiguri. These facts appear in the correspondence.

3. We are of opinion that the Bank had given every possible indulgence to the employee and that it was the employee's deliberate defiance of orders that is responsible for the present situation. Having definitely promised as early as 31st March 1952 that he would go to Shillong, he went back upon the same and finally insisted on his being kept at Jalpaiguri. In our opinion, this conduct is not justifiable.

4. In the circumstances, we grant permission to the Bank to dismiss him with effect from the date of his suspension.

5. In Complaint No. 91/52 the workman prays that the suspension order should be cancelled and that he should be reinstated as Assistant Cashier at his original post at Jalpaiguri with payment of arrears of salary, dearness allowance and also given adequate compensation. As we have found that he has been wilfully guilty of disobedience of orders we think this complaint should be rejected and we pass an award accordingly.

(Sd.) S. PANCHAPAGESA SAstry, Chairman.

BOMBAY;

(Sd.) M. L. TANNAN, Member.

The 3rd December, 1952.

(Sd.) V. L. D'SOUZA, Member.

[No. LR-100(18).]

S.R.O. 2118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Calcutta, in the dispute between the Nationale Handelsbank N.V. and its workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, Gurusaday Road, Ballygunge, Calcutta-19.

BEFORE SHRI K. S. CAMPBELL-PURI, B.A., LL.B., CHAIRMAN.

REFERENCE NO. 5 OF 1952.

Parties

The Nationale Handelsbank N. V., Bombay

And

Their workmen.

Appearances: Shri M. S. Desai in person and as President, Nationale Handelsbank Employees Union, Bombay.

Mr. J. D. Van Oenen, Accountant, for the Bank.

AWARD

By notification No. LR.90(131), dated 19th January 1952, Government of India in the Ministry of Labour referred an industrial dispute for adjudication to this Tribunal existing between the Nationale Handelsbank N. V., Bombay and its workmen in respect of the matter specified in the schedule which reads as follows:

SCHEDULE

Whether the dismissal from service of Shri M. S. Desai from the Bombay branch of the Bank on or about the 25th of April 1951 was justified and if not what relief should be granted to him.

The usual notice was issued to Shri M. S. Desai, President, Nationale Handelsbank Employees Union as well as the Federation of Bank Employees, Bombay, for filing statement of claim with a copy of the other side in a month's time, and the employer bank to file their written statement thereafter within a month's time from the receipt of the copy of the statement of claim. The pleadings were completed in the first week of May 1952 and the case was to be heard in due course in order of precedence. It however so transpired that Reference No. 23 of 1951 (The New Asiatic Insurance Company Vs. Their workmen) was fixed for hearing at Bombay from 12th November 1952 onward; and as this Reference had also emanated from Bombay the hearing in this case was also fixed at Bombay in order to obviate the necessity of going once again to Bombay. The actual hearing came up on 24th November 1952 after the close of proceedings in Reference No. 23 of 1951. Shri M. S. Desai appeared in person and also asked for his appearance to be noted as President of the Nationale Handelsbank Employees Union. The Bank was represented by Mr. Palkiwala, Advocate, but on the objection raised by Shri

Desai under section 36 of the Industrial Disputes Act, he was not allowed to appear on behalf of the Bank for want of consent of the other side. Mr. Oenen, Accountant of the Bank, accordingly represented the Employers during these proceedings, which continued up to 29th November 1952.

The Bank representative raised at the very outset a preliminary objection to the effect that this was a dispute of personal character relating to Shri Desai and the employees as a whole have no concern with it and as such it is an individual dispute and not an industrial dispute as defined under section 2(k) of the Act. It was maintained that no Reference could have been made regarding an individual dispute and the same was incompetent and was not triable by this Tribunal. It was also argued that Shri Desai was not discharged during the alleged dispute but the dispute was raised by him after his discharge and no one of the employees much less any Union had taken up his cause. Reliance was placed on the following legal precedents:

- (1) Kandan Textiles Ltd. Vs. Industrial Tribunal, Madras reported in 1949 Labour Law Journal, page 875.
- (2) J. Chowdhury Vs. M. C. Banerjee, reported in 55 Cal. Weekly Notes, page 256.
- (3) United Commercial Bank Ltd. Vs. The Commissioner of Labour, Madras, reported in 1951 Labour Law Journal Vol. I, page 1 (pages 5 and 7).
- (4) Titaghur Paper Mills Ltd. Vs. Shri T. P. Gosh, reported in 1952 Labour Law Journal, Vol. I, page 60 (pp. 61, 62 and 63).
- (5) Standard Vacuum Oil Co. Vs. Industrial Tribunal, reported in 1952 Labour Law Journal, page 612 (614).
- (6) Ayyaswami Nadar Vs. Joseph and Others, reported in 1952 Labour Law Journal, Vol. II, page 9 (page 14).

Before discussing the aforesaid authorities relied upon it is noteworthy to state that the Bank representative pressed the preliminary objection on the basis of some legal authority in an abstract manner without referring to the particular facts of this case and thereby applying the dictum laid down in these authorities on the facts of this case. The basic authority is one of 1949 'Kandan Textile Ltd.', in which more than one points were posed for discussion and the learned Chief Justice of Madras High Court who delivered the judgement in that case observed that while the tenor of the Industrial Disputes Act lend support to the argument *viz.*, that there can be no industrial dispute between the workers and the management unless the majority of the workmen take up the cause; and make a common dispute of it; the definition of the Industrial dispute was wide enough to cover even a dispute between an Employer and one of the workmen or between one workman or another workman which is connected with one or other connected matters mentioned. It was not decided in that case whether an individual dispute between the employee or employees on the one hand and the Employer on the other is an industrial dispute which could be referred to an Industrial Tribunal. The authority to my mind is, therefore, not in point. In the other citation *viz.*, United Commercial Bank Ltd. Vs. The Commissioner of Labour, Madras (I Labour Law Journal 1951 p. 1) the point raised was with regard to the interpretation to be put on section 41 of Shops and Establishment Act, Madras. The High Court dismissing the application for writ held that the right conferred by the Shops and Establishment Act was an individual right; while disputes that could be referred for adjudication to an industrial tribunal under the Industrial Disputes Act were as regards collective rights or of disputes in which a majority or a substantial number of workmen in an undertaking were interested and did not refer to an individual rights. It was further held at the same time that there was nothing in the Industrial Disputes Act to hold that the individual right conferred by the Shops and Establishments Act was taken away or in any manner restricted by the Industrial Disputes Act. This case also has no bearing on the facts of the case in hand. The 'Titaghur Paper Mills Ltd.' and the 'Standard Vacuum Oil Company' cases cited above, of course, deal with the question as to whether the dispute was only an individual dispute not cognizable under the Act by an industrial dispute when neither the workman as a body nor a majority of them had espoused the cause of the employees. The point precisely under discussion in these two cases was that when the dispute was not sponsored by any Union whether it could have been referred to adjudication and as such the dictum laid down shall have to be tested on the particular merits of each case. In another authority reported in 55 Calcutta Weekly Notes, page 256 the question as to 'what is an individual dispute' was more elaborately gone through and the decision made in that case *viz.*, J. Chowdhury Vs. M. C. Banerjee of course warrants close study of the question. It is however significant to note that this decision has already been challenged in a Letters Patent appeal which is still pending in the Calcutta High Court. Without having the

advantage of the more authoritative pronouncement of the Letters Patent Bench of the Calcutta High Court, the view adopted by the single bench appears to me to be in conflict with the various decisions given by the Labour Appellate Tribunal which are binding upon me, regard being had of course to the wording of the Reference and the particular facts of each case.

In the Calcutta case 'J. Chowdhury Vs. M. C. Banerjee' it was admitted that the dispute if any was between the employer on the one side and an individual employee on the other, and it was held that Industrial Disputes Act was never intended to provide a machinery for redress by a dismissed workman, and if such a dismissal is taken by a workers union or a substantial body of workmen who continue in employment and espouse his cause, then only an industrial dispute may arise. Now in this case in hand the Employees Union by their resolutions took up the cause of Shri Desai and incurred all the expenditure. The other distinguishing feature is (to which I would refer presently while dealing with the arguments of Shri Desai in reply to the preliminary objection) that the wording of the Reference itself indicates that the dispute exists between the Bank and its workmen. In this view of the matter, 55 Calcutta Weekly Notes 256 case is also of no help to the employer.

Shri Desai on the other hand arguing in reply to the legal objection submitted that in the first place his cause was taken up by the Federation of Bank Employees as well as the Nationale Handelsbank Employees Union and particular reference was made to the resolution passed by the Union (Ex. B). This resolution reads as follows:

* * *

Ex. B.—

* * *

"1. As the Union was not strong enough nothing by way of strike protest etc. can be done by the Union regarding the dismissal of Mr. Desal. However it is decided his case be taken up with proper authorities, all the expenses regarding his case be paid by the Union from Union funds or from the amount held by Mr. Desal and further the resolution previously passed by the General body regarding Mr. Oenen be forwarded to Head Office."

* * *

It was next urged that the Federation of Bank Employees also passed a similar resolution and even in the course of enquiry held by the Conciliation Officer, this question was gone into and the Conciliation Officer was informed by the Employees Union in their letter dated 25th August 1951 (Ex. E) that the cause of Shri Desai was sponsored by the Union and taken up to the Government (Ex. E). Shri Desai furthermore maintained that he was still holding the presidency of the Union and his appearance in this Tribunal was in his own capacity as well as that as President of the Nationale Handelsbank Employees Union. It was concluded that on these premises which have not been challenged by the Bank side, the dispute was between the Employer and its workmen and his was not an individual dispute. It was urged that in the light of these facts the authorities cited by the other side were wholly inapplicable. Mr Desal also referred to some decisions of 1951, reported in Labour Law Journal, April 1951 at page 362, and December 1951, pages 782 and 808. I have however no mind to discuss these awards in the presence of Labour Appellate Tribunal's decisions of 1952 recently published in Labour Law Journal 1952 in the months of September, October and November in the cases of (1) Snowwhite Products Ltd. and Nagaswamy, (2) Vishnu Sugar Mills, Ltd., and Shri Aziz, (3) Kundan Sugar Mills versus Shri Chandl, respectively. In the aforesaid cases the question arose before the Labour Appellate Tribunal as to what individual dispute is. Their Lordships without deciding whether an individual dispute will be an industrial dispute pointed out that as per the order of Reference by the Government, the dispute was one between the Company and its workmen represented by the Union and as such it was an industrial dispute. In one case (Snowwhite Food Products Vs. Nagaswamy) the Labour Appellate Tribunal refused to entertain the objection in the competence of the Reference on the ground that the order of reference referred to the dispute was between the Company and its workmen and no evidence to rebut the same was placed before them. In the instant case the position is the same and it has been specified in the reference that an industrial dispute exists between 'the Nationale Handelsbank and its workmen' in respect of the matter specified in the schedule. Shri Desai obviously becomes the subject or the matter specified but not the complainant in the Reference. The dispute accordingly exists between the Bank and its workmen and as discussed above it has been established on the record that the cause of Shri Desai was sponsored by the Union which evidence stands wholly unrebutted. In the result, from whatever standpoint, the objection may be considered it is devoid of any substance and the same is repelled.

On merits, the case of Shri Desai as disclosed from his statement of claim summarised briefly is that he is an old employee of the Bank having joined the Bank's service in the year 1920 and that his work was highly appreciated by the Bank management by allowing special promotions to him more than once. He was also getting yearly promotions alright and reached the maximum of the grade of Rs. 250 in the year 1930. As there were no fixed grades he could not get any further promotion or increment although the management was quite satisfied with his work and he was told that he would be made an officer of the Bank on the termination of the war. He was however given an increment of Rs. 10 in July 1945 and another special increment at the close of the year. The management was so pleased with his work that in March 1946 the silver jubilee of his service was celebrated by the staff and he was granted one month's salary plus contributions collected from the staff including European Officers in token of his meritorious services rendered to the Bank. It was further stated that in the same year the employees of some other banks organized themselves in the form of Unions and the employees of this Bank also formed a Union of their own and elected Shri Desai as their first President. A Federation of all the Bank Unions was some time after formed and Shri Desai was appointed the Treasurer of that Federation. It was alleged *inter alia* that occasions for negotiations with the employers naturally cropped up frequently and Shri Desai in his capacity as President of the Union and an office bearer of the Federation represented the grievances of the employees whereby his relations with the management became strained, after 1949. At this stage it so happened that some deductions were made from the salary of several employees including Shri Desai on account of sick leave, at the instance of the Accountant, and the dispute was referred to an industrial tribunal whereby Shri Desai was allowed salary of the whole month without any deduction. Some time after there was a long talk between him and the Accountant on various subjects wherein Shri Desai pressed the view point of the labour which was not relished by the Accountant and the discussion left some sting. Shri Desai's plea in referring to this sequence of events is that it was after this incident that the Accountant resorted to pin-pricking and all sort of checking was started so far his work was concerned. This process continued for some time and culminated into giving him a regular charge sheet to explain some of the mistakes and errors detailed in the charge sheet of 28th March 1951. The enquiry ensued thereupon which was attended by Shri Desai but he lodged a protest to the Manager to the effect that the enquiry should not have been entrusted to the Accountant who was responsible for the charges levelled against him. It was next stated that although he attended the proceedings yet he did not receive some of the conics of the proceedings and meanwhile another charge sheet dated 2nd April 1951 was given to him. He however was not able to submit his explanation and asked for time but the same was not granted and ultimately he was informed on the 25th of April that his services were terminated.

The management in their written statement comprising over 10 typed pages also thought it proper to give the whole history of Shri Desai's career for the purpose of back-ground of his case and pointed out the psychological aspects of Shri Desai's character with an analysis of the mental make up and the development of certain outlook which made Shri Desai an undesirable man and unfit to continue in Bank's service. It was admitted in the written statement that Shri Desai got promotions in recognition of his work and went on happily for more than two decades as a Senior Clerk but having reached the maximum of his grade he developed a complex as if his career was thwarted and he started to approach the management for higher salary and more responsible position. It was however not possible to consider his request since his capacities although sufficient for the simple routine work were inadequate for work of a higher level. It was alleged *inter alia* that when it was pointed out to him that he could not go further he developed a streak of discontent in his character and became cantankerous. It was submitted that instead of trying to acquire the knowledge required for work at a higher level he found some sort of escape and an outlet for his ambition in becoming the President of the Employees Union. The Bank found him becoming more and more bitter towards Bank caring little for discipline or carrying out the directions of the management. In fact his desire for betterment became an obsession for him and he started looking upon himself as a failure and turned for revenge against the Bank which seemingly had let him down.

The major part of the statement is so to say a type of thesis on the pathological aspects of a disgruntled and thwarted man and the Bank's case put in nutshell is that with the development of this mentality Shri Desai became revengeful and tried to sabotage (which word was used more than once in his statement) the Bank's interests and also became careless in the performance of his duties. The

result according to the Bank was that he was responsible for various lapses and acts of omission and commission which formed the subject of regular charge sheet dated 28th March 1951. It was stated that proper enquiry was made into the charges affording him ample opportunity to explain the charges and to defend himself and that the Bank on the report of the enquiring officer came to the conclusion that they must part with him. He was however allowed his gratuity amounting to 15 months basic salary last drawn by him and other benefits by way of indulgence having regard to the length of his service.

Both sides examined one witness each and mainly relied upon documentary evidence. Shri Desai in support of his allegation and averments made in the statement of claim produced a considerable evidence comprising over 73 documents. These are shown under six different groups and spread over the copies of the resolutions, notices, correspondence between Shri Desai and the Bank on various matters. In the course of argument, however, all documents were not referred to and particular reference was made to some of the documents relating to the charges and enquiry made thereon, the dismissal order, dated 25th April 1951 and the list of duties assigned by the Bank to Shri Desai. On the other hand the Bank also got no less than 44 documents exhibited consisting of correspondence, notices to the staff, letters sent to Shri Desai and letters from the Bank's constituents regarding the negligence of Shri Desai in his work. The Bank representative also in the course of arguments referred to some of the documents and as such a mass of documentary evidence hardly requires any serious attention for the purpose of discussion.

The oral evidence, I may say, at the outset is not of much help because Mr. Muller EW-1 on behalf of the management almost gave the gist of the written statement in his deposition and yet pleaded his inability to refer to any document or cited any instance when those allegations were put to test in the cross-examination. Ultimately it was left to the documentary evidence which was tendered on behalf of the management in evidence without having examined the Accountant, who conducted the enquiry and was alleged to have been responsible for having brought about the dismissal of Shri Desai. Similarly, Shri Desai abstained from coming into the witness box as his own witness and to subject himself to the cross examination of the other side with regard to his career in the Bank's service and his accusation against the Accountant that the latter had started pin-pricks by checking his work and ultimately levelled charges against him with the avowed purpose of terminating his (Mr. Desai's) services. Shri Desai also examined one witness Shri C. P. G. Nair (WW-1) but his statement again does not touch the charges levelled against Shri Desai and be-speaks only in general terms of his good work and trade union activities. This gentleman of course deposed that he had resigned as a protest against the dismissal of Shri Desai from Bank. I would therefore mainly consider the documentary evidence and the averments made by both sides in the pleadings with regard to the background of the case.

Now on the appraisal of the documentary evidence three main factors present prominently and it is to be seen as to what reasonable and justifiable conclusion can be drawn from these facts and circumstances summarized above in the respective statements of case.

- (1) The work of Shri Desai for about three decades i.e. from 1920 to 1949.
- (2) The trade union activities of Shri Desai after 1946.
- (3) Whether the charges as they stand constitute a misconduct of the type which warrants dismissal.

With regard to the first I don't think any elaborate discussion is needed because the same was not disputed by the Bank. The second factor of course admits of some scrutiny to understand the different view points. Both sides stressed their view point on the basis of the change which occurred in the conduct of Shri Desai after having joined trade unionism and the effect of that on the management. Shri Desai as said above maintains that his repeated representations made on behalf of the employees in the furtherance of employees interest created some unpleasantness and Mr. Von Oenen, the Accountant, who was every time handling the situation, resented his activities and managed first by giving him bad name and then by striking him with flimsy as well as trivial charges, and ultimately with a show of enquiry got him dismissed from service. It was argued that his duties as detailed in Ex. BB consisted of clearing, storing, insurance and relevant correspondence, attending customers, shipping guarantees, checking of memos and payment advices. He had furthermore to attend to the clients, bills folios, over due bills and relevant and general correspondence, cables, advising of due dates and general guidance. The charges levelled against him however when put to test in the discharge of these

duties are so trivial that if he had been in good books nobody would have cared to call upon him to explain. It was maintained that no loss was sustained and the management only wanted to put an end to his trade union activities and as such he was a victim of vindictiveness. On the other hand the Bank representative argued that Shri Desal was frustrated owing to the non-fulfilment of his ambition and became revengeful to the Bank and having absorbed himself in other matters became careless in the discharge of his duties which the Bank could not afford to allow.

I have read and re-read the written statement of the Bank with good care and found it not only an interesting reading but a well-knit essay on psychological aspects of human nature couched in beautiful language but I failed to follow the conclusions sought to be drawn from that when considered in the light of the actual charges upon which the order of dismissal has been based. These charges for facility of reference are reproduced as below:

ANNEXURE "C"

(*Of Statement of claim*)

NATIONALE HANDELSBANK N. V.
Bombay, the 28th March, 1951

Mr. M. S. Desai.
C/o. Nationale Handelsbank, N. V.,
Bombay.

CHARGE SHEET. (I)

The following facts have been brought to our notice:

A. On Saturday, March 24, 1951, you left the office at 3 P.M. In the muster roll book you filled in as time of departure 2 P.M. This is against the orders contained in our Notice of February 16, 1951.

B. The work entrusted to your care has been badly neglected. It has been found that no proper action has been taken by you at least in regard to the following bills.—

(1) No. 32/5168 for £ 1123-7.—You wrote a letter to drawees on March, 1951, that the steamer had arrived. The steamer had, in fact, arrived on March 11 or before. Beneficiaries should have been advised not later than March 13, the documents having been received on March 12. Beneficiaries being in Surat, immediate action should have been taken.

(2) No. 32/2031 for \$ 36.07.—No action has been taken since February 7, 1951, to obtain the documentary evidence required in order to remit the proceeds to the Irving Trust Co.

(3) No. 32/5002 for £ 484-3-0.—You wrote a letter to drawees on March 22, 1951, that the steamer had arrived. The steamer had arrived long before and had, in fact, already left Bombay on March 15.

(4) No. 32/2017 for £ 19-6-8.—On March 1, 1951, a letter was received from the SWL's Banking Corporation to return the above draft. No action was taken.

(5) No. 32/5092 for £ 202-15-0.—From the bill presentation book, it appears that the draft, which was presented on March 7 or 8, was only returned on March 19, 1951.

(6) No. 32/5099 for £ 273-8-9.—Same as (5). Draft returned on March, 12, Drawees are residing just across the road.

C. The files in your care contain many telegrams, letters, documents etc. which should have been sent to the filing department, since the relative bills had been paid and/or no further action was to be taken. As example we mention:

(1) No. 31/3702 for £. 599-5-1.

(2) Nos. 32/4243, 4244, 4245, 4246 for £. 2521-3-9.

D. (1) The baskets allotted to you were found to contain many irrelevant papers put together in a very disorderly manner. A book with Rules of the Bombay Exchange Banks' Association marked "Credit Department" was also found there.

(2) Some of the files containing documents etc. entrusted to your care were also found to be extremely disorderly and untidy.

(3) Several drawers of your writing desk were found to contain bank records or books.

(4) More than one drawer had been utilised for personal belongings or office writing utensils.

E. On Thursday, March 22, 1951, you were observed going for lunch leaving all documents entrusted to your care unattended to lying on your table.

In view of the above we intend to hold an enquiry on April 2, 1951, at 3 P.M. You may be defended by your representative and you may produce such witnesses and evidence as required by you, as long as they are relevant to the above charges.

(Sd.) VAN OENEN,
for Manager.

ANNEXURE "E"

(Of Statement of claim)

NATIONALE HANDELSBANK N. V.

Bombay, the 2nd April, 1951

Mr. M. S. Desai,
Bombay.

CHARGE SHEET. (II)

It appears that since our previous Charge sheet of March 28, 1951, enquiry into which was going to be held this afternoon, another incident has taken place, into which an enquiry has become necessary.

(1) By your admission in front of an Inspector of Bombay Shops and Establishments, Mr. M. de souza-Louzade, you took lunch today for half an hour only, i.e., from 2-15 to 2-45, instead of the compulsory one hour.

(2) When spoken to by the said Inspector, you stated that the Accountant knew all about it, thereby implying that he had given you permission to do so, which is untrue.

(3) Subsequently you again approached the said Inspector stating "some of the people have been sent away just now, on your arrival", thereby making an untrue allegation which may be prejudicial to the interests of the Bank. An enquiry into the above charges will be held on April 6, at 4 P.M.

(Sd.) VAN OENEN, Accountant.

Now clause (A) in the Charge sheet of 28th March 1951 is to the effect that Shri Desai left the office at 3 P.M although in the Muster Roll Book he showed the time as 2 P.M. He was charged for having contravened certain order of 16th February 1951. This order is Ex. 1 whereby the members of the office staff were requested to note the office timing in order to comply with the Bombay Shops and Establishment Acts. Mr. Oenen arguing in support of this charge maintained that although Shri Desai seemingly worked for one hour more which was in the interest of the Bank but technically infringed the dictates of the order by having worked late in the office and showing the due time of departure earlier. Shri Desai in his explanation states that on Saturday (24th March 1951) some time after 2 P.M. Mr. Vagan gave him some documents and told him that he could attend to them and sit late. As he did not want any payment for overtime work he marked the departure time 2 P.M. as usual. The point for determination is much too simple and without remarking with regard to the technical infringement it hardly looks to any prudent man to dub this sort of infringement amounting to misconduct. Part B pertains to six bills which were alleged to have been neglected and the explanation given by Shri Desai was to the effect that he did not find time to look up the relevant correspondence on account of too much work. And even presuming the dates to be correct it was yet to be ascertained when he got the documents from Mr. Vagan. It was further stated that Bank's correspondence had been advised on the position of the bills and the drawees had deposited the full amount of the bill and have been advised to produce the post parcel receipt or the duty bill as documentary evidence of the import of the goods etc. This explanation is Annexure D of the statement of claim and exhibited as Ex. BC, wherein it has been asserted that no loss was incurred by the Bank. Mr. Muller

in his deposition in this connection had deposed that any negligence in the matter of bills was likely to occasion heavy loss to the Bank; but the real point for determination is as to whether the charge of negligence was established. On the perusal of the explanation and in view of the fact that work which was fluctuating and had increased, as admitted in the course of arguments, it is difficult to hold that the charge of negligence amounted to misconduct more especially when no actual loss was sustained. Shri Desai in the course of arguments denied the charge categorically and I see no good reason that one who, as evidenced from the first charge, was prepared to sit late on Saturday without asking for overtime payment deliberately or wilfully neglected the performance of the duty entrusted to him. Negligence is not definable and is a question of fact and not of law; but in common sense the crucial question on which the liability of negligence depends is whether a party could by the exercise of reasonable care have avoided the consequences accrued from such negligence. In case no actual loss has occasioned it follows that the negligence was not in any way effective. To my mind, before the negligence would amount to misconduct it must be proved that some loss was sustained by the Bank and could have been avoided but for the negligence. Even if this proposition be not put so wide, each case must depend on its particular merits and no hard and fast rule can be laid down. In the instant case nobody came into the witness box on the Bank's side to state as to how Shri Desai was negligent in delaying a certain bill; nor the statement of any person if examined in the enquiry in this connection was placed on the record. The report and the dismissal order Ext. BG (Annexure F of the statement of claim) relied upon again deal with general behaviour of Shri Desai and complain of his having been undesirable. The other aspect of the question is as to whether the negligence attributed to Shri Desai was wilful. I am conscious that whenever any person is placed in a position or entrusted with a certain duty that others should think that he would exercise ordinary care and skill in the performance of his duty he was expected to do it properly. But sheer delay without causing any loss traceable to over work or other engagement by no stretch of reasoning can be termed as wilful negligence. I need hardly add that until and unless it is not proved that the negligence was deliberate and wilful it could not amount to misconduct. If one works and attends properly to his duties but in the circumstances that he is placed by the other side to whom he owes that duty it would be laying down a perilous proposition if one could be visited with the extreme penalty of dismissal on the plea that his work was over due more especially when the delay did not cause any loss. Part Nos. C, D and E deal with having left the documents on the table or keeping papers in the drawers in a disorderly manner. The explanation to these was that papers are always left on the table and there was no risk of having been removed by anybody. The Bank representative however in the course of arguments emphasised that the clients of the Bank come into the office and there was every likelihood of the loss of the documents. The charge as it stands again appears to have been made much of. In offices at the time of lunch interval it is common practice that the papers are put on the table and the peons outside are at guard and even if it would have been more advisable not to leave papers on the table I do not think that this charge was levelled in order to make it possible. It rather betrays the anxiety that Shri Desai's each little action was under surveillance as if one was on the look out that some thing should be there to strike the man not that he had actually neglected his duty but because he had become a sore and an undesirable man. My impression is it would have been better if he had been charged straight-away that he was attending to other matters which sapped the discipline of the Bank, but to accuse the man with this kind of charge viz., that papers in his drawers were not kept properly or that some documents were lying on the table was too much to masquerade the anxiety of getting rid of him.

The gravamen of the second charge dated 2nd April 1951 was that Shri Desai took his lunch on that day for half an hour only i.e. from 2-15 to 2-45 P.M. instead of compulsory one hour, and when spoken by an Inspector he stated that the Accountant knew all about it thereby implying the permission which he was unable to do so. The stand taken up by Shri Desai in defence in the statement of claim at page 11-A was that the enquiry into the first charge-sheet was going to be held on 2nd April 1951 at 3 P.M. and Shri Desai, therefore, approached the Accountant and asked him at what time he should go for his lunch on 2nd April as the usual lunch time was fixed by the Accountant from 3 P.M. to 4 P.M. He was told that he should go for his lunch on that day either before 3 P.M. or after the enquiry. As lunch after 4 P.M. Shri Desai proceeds, would again have contravened the provisions of the Shops and Establishment Act and would have involved him into another charge of a similar nature, Shri Desai accordingly decided to go to lunch for half an hour in order to enable him to return before 3 P.M. for attending to the enquiry which was going on against him on the first charge-sheet. Neither the Accountant nor Shri Desai came into the witness box

where the respective allegations of both could have been put to test and left with the pleading I should only say that in natural course of things the explanation of Shri Desai appears to be in consonance with the contingency of the enquiry and that of the lunch interval. Furthermore, as observed in the case of Part A of charge-sheet Shri Desai did not avail beyond the time he was entitled to and rather made use of lesser time to adjust himself. The objection taken by the management embodied in this charge is much too technical and does not warrant any elaborate discussion. Suffice it to say that the charge appears to be of the nature of pin pricking but for the strained relations should not have been levelled against the employee. The same appears to be devoid of any merit and I am of the definite opinion that this does not amount to misconduct.

Shri Desai is admittedly an old employee and had put in good work for a long time and even as suggested by the Bank representative that he was thwarted in the fulfilment of his ambition of rising higher and had became more assertive it was still his right to be continued in service until and unless he had not committed an act of gross misconduct, prejudicial to the interest of the Bank. The charges detailed above manifestly are of very trivial nature and some of them altogether flimsy and I am not prepared to be led by the reasoning advanced in the order of dismissal that the patience of the Bank had been thoroughly exhausted, and that his attitude towards his superiors and habitual and gross negligence was poisoning the atmosphere of the office. Some of the observations made in the order are significant and to my mind constitute the real cause of his dismissal and the same are reproduced as under:

"No longer will you be able to hide under the protective cloak of the Presidentship of the Union. We can no longer maintain proper discipline in the office especially among the many juniors of our staff, when they see how a senior member of our staff goes his own way not paying heed to the lawful and reasonable orders and directions of his superiors, in fact, all our orders are being systematically broken amounting to a virtual boycott of the Bank and its officers."

Your attitude during the enquiry has fully confirmed this view, if it needed any confirmation. Your stubborn and insubordinate silence has only gone to prove your guilt still further. The excuses that pretends made by you for delaying the enquiry *ad infinitum* have not helped you, neither your complaints about an insinuation made against the enquiry officer."

In the above quoted extract from the order of dismissal it can be safely gathered that the management had become sick of the man on account of his general behaviour which he had been exhibiting as the President of the Employees Union. His insistence in asking for more time in defence and his protest that the enquiry should not have been made by the Accountant, against whom he had some grievance; but by some other person was also used against him in coming to a certain conclusion. The same is not at all intelligible. It appears that the management was not alive to the basic right of an accused in defending his case and it was expected from Shri Desai that he should not have been assertive while defending himself. Mr. Oenen, arguing on behalf of the Bank, submitted that he was entrusted with the enquiry because no other officer was available. The argument is hardly convincing but even if it be accepted it makes no difference so far the actual charges are concerned which as said above are not established and do not amount to gross misconduct. For all these reasons I am of the definite opinion that the dismissal of Shri Desai was not justified on the facts upon which it is based and the management was motivated to get rid of the man on some charge good, bad or indifferent because he had developed a mentality of showing too much self respect, assertion and used to take up causes of employees indiscriminately to the higher authorities.

This brings me to the other part of the issue as to what relief he is entitled to and whether the circumstances justify his reinstatement or payment of suitable compensation. It is now well established from the various decisions of the Labour Appellate Tribunal as well as the awards of the industrial tribunals that a tribunal may direct the reinstatement or award compensation when it is satisfied that the employee concerned was victimized for his labour activities or the employer was actuated to dispense with his services in bad faith with an ulterior motive or encroached on the contractual or legal rights of the employee or acted in a manner which was repugnant to social justice. Keeping in view this principle it is to be considered whether it is a fit case for reinstatement or suitable compensation. I have already held that the dismissal was not justified in consideration of all the facts and circumstances and that the employer was actuated by malice but this does not necessarily convey that every unfair labour practice may amount to victimization because every victimization is not necessarily an unfair labour

practice. As observed above the management in my opinion got irritated by the oft repeated assertion and general behaviour of Shri Desai and got rid of him by dispensing with his services on wholly inadequate grounds. Without elaborating the point further I would only remark that I do not think that it is a fit case for reinstatement inasmuch as it would not promote the harmonious relations or maintain better industrial relations in the interest of the community of workers whose President Shri Desai happens to be. The other reason for not allowing reinstatement was advanced from the side of employer which is more cogent and convincing. That is this. It was contended on behalf of the Bank that Shri Desai has already completed 55 years of his age in last June 1952 and has passed the age of superannuation by this time. It was urged that even if his services had not been terminated he should have retired by this time and as such reinstatement is not called for. Shri Desai in reply to this contention submitted that in the first place the age of retirement is not 55 and secondly if it was so it lay in the discretion of the employer to extend the period of employment up to 60 years. The argument was reinforced by citing the names of some of the employees who are working at the age of 56 and 58. He, at the same time admitted that he had reached the age of 55 by this time. On the appreciation of the arguments advanced on the question of the age of retirement suffice it to say that although both sides were given ample time to lead whatever evidence—oral or documentary—they wished to adduce, the record is lacking in definite evidence on this point. In the circumstances I do not see any good reason to depart from the normal age of 55 and specially when it lies in the discretion of the employer to extend the period in suitable cases Shri Desai cannot justifiably claim that he could continue after 55 years of age. The contention raised by the employer to my mind furnishes a complete answer so far reinstatement relief is concerned, and I find no good ground as observed above to direct reinstatement in this case.

The next question is one of suitable compensation. The stand taken up by the Bank in this respect is that they have already allowed Shri Desai salary including allowances up to and inclusive of 31st May 1951 together with such further sums as leave on full pay and allowance etc.; to which Shri Desai would have been entitled had he not been dismissed from the Bank. The employer has also sanctioned by way of *ex gratia* gratuity amounting to 15 months basic salary last drawn by him as borne out from the order of dismissal dated 25th April 1951 (Annexure F to the statement of claim). It was also stated in this order and the Bank representative repeated it in his arguments that the Bank will also endeavour to obtain permission to have the amount standing to the credit of Shri Desai in the Provident Fund account being released to him. This offer however was qualified with the following rider:

“We make it absolutely clear that we are under no compulsion in view of the gravity of the misconduct to pay any of the amount specified in this paragraph. The length of your service has been the only consideration which has permitted us in taking the necessary steps for obtaining permission to make the said payment. We trust that you will accept these monies if and when paid in the same spirit in which they are given.”

The above quoted extract from the order needs no comment, but Mr. Oenen in the course of arguments while assessing the value of the benefits sanctioned to Shri Desai stated that these amount to Rs. 13,000 and maintained that the amount was large enough in case his order of dismissal is set aside and he was to be compensated. Shri Desai in reply stated that he had not accepted the offer of these monies because he felt sorely aggrieved by the order of dismissal which was the outcome of the hostile attitude of the Accountant Mr. Oenen towards him and the management was wholly impervious in terminating the services of an old employee as Shri Desai was and who had rendered long valuable services to the Bank. Now the services of Shri Desai admittedly were terminated on 25th April 1951 and both side concede that he attained the age of 55 in June 1952. It follows that he was discharged from service fourteen months earlier and he was deprived of the emoluments he could draw for this period. It is well recognized in the matter of compensation that the courts have ample discretion in assessing compensation and the measure for assessment is generally to be one which is used in the matter of damages in an action for the breach of contract. In other words the word ‘compensation’ is normally understood in the sense of damages contemplated under the Contract Act. It is also accepted in law that damages are to be awarded as compensation for any loss arising naturally in the usual course of things when that course is snapped. According to the admitted facts of this case Shri Desai should have continued in service for a period of 14 months and would have added to some more benefits in the normal course of retirement. The measure of damages of course depends upon various factors in the matter of

nployment but under the Industrial Disputes Act, I don't think I am called upon to enter into the discussion as contemplated under Contract Act or Specific Relief Act and I would only adopt the broad principle that the damages have to be measured by the loss suffered by the employee without taking into consideration the question of punitive damages. Judged in this principle I have no hesitation in allowing compensation to Shri Desai to the extent of 14 months salary according to the rate he was drawing on the date of discharge including all allowances which were drawn by him. If the Bank was deprived of his service for these fourteen months and is now made to pay his emoluments, Shri Desai also suffered a lot by having been out of employment in addition to all the anxiety and deprivation during this period. I would further direct that Shri Desai shall be entitled to all the benefits already allowed by the Bank by way of gratuity, leave allowances and the amount standing to his credit in the Provident Fund Account as stated above. In other words the compensation now awarded will be in addition to those benefits already allowed by the Employer of his own accord at the time of the termination of his service detailed in the order of 25th April 1951. The direction shall be carried out within one month from the date, when the award becomes operative.

NOW, THEREFORE, THIS TRIBUNAL MAKES ITS AWARD IN TERMS
AFORESAID THIS THE 5th DAY OF DECEMBER 1952

K. S. CAMPBELL-PURI, Chairman,
Central Government Industrial Tribunal, Calcutta.

[No. LR-90(181).]

P. S. EASWARAN, Under Secy.

